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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,859	12/26/2001	Masayuki Kagoshima	217649US2XPCT	8455

22850 7590 06/11/2003

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

STERRETT, JEFFREY L

ART UNIT	PAPER NUMBER
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2838

DATE MAILED: 06/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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018,859

EXAMINER

ART UNIT

PAPER NUMBER

7

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-10 is/are pending in the application.
- ☐ Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-10 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 296
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

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1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Chappell et al (US 5,547,208).

Chappell et al discloses a vehicle (11) having drive motors (14), a generator driven by an engine (the generator and engine of the vehicle), a main battery (12), an auxiliary battery (16), and

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a switch (18) to drive the motors in an emergent operation when the motors can not be driven by the main battery or generator. It is noted that "hybrid construction machine" is nothing but a name of a type of vehicle in the preamble without any supporting recitation in the body of the claims and as such lacks any patentable weight.

5. Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Chappell et al.

Chappell et al teaches a vehicle as recited by claim 3 except for specifying that the vehicle is a hybrid excavator. Official notice is taken that hybrid excavators were old and known vehicles in the art at the time of the invention. It would have been obvious to one of ordinary skill in the art at the time of the invention to have applied the teachings of Chappell et al to a hybrid excavator since such was an old and known vehicle in the art at the time of the invention and since such vehicles share the same problem of unsafe conditions when the normal power sources of the vehicle fail.

6. Claims 5-10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Chappell et al in combination with Chiu et al (US 6,427,107).

Chappell et al teaches a vehicle, such as a "hybrid construction machine", as explained above and as recited by claims 5-10 except for utilizing a power varying controller responsive to the content of required work. Chiu et al teaches power management in hybrid construction machines was an old and known expedient in the art at the time of the invention. It would have

been obvious to one of ordinary skill in the art at the time of the invention to have modified the vehicle of Chappell et al by utilizing power management or power varying controller responsive to the content of required work as taught by Chiu et al in order to increase the efficiency of a vehicle, such as a "hybrid construction machine".

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Draper et al (US 2,729,750), Gebhard (US 3,108,190), Curtis (US 3,340,402), Wareman et al (US 4,780,618), Palfey et al (US 6,177,737), and King et al (US 6,486,568) are cited to show auxiliary power systems old and known in the art at the time of the invention.

Sakai et al (US 5,969,624) is cited to show a hybrid vehicle old and known in the art at the time of the invention.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Sterrett whose telephone number is (703) 308-1632. The examiner can normally be reached on Monday through Thursday from 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Sherry, can be reached on (703) 308-1680. The fax phone number for this Art Unit is (703) 305-7723 and the fax phone number for this Group is (703) 305-3431 or (703) 305-3432.

▪ Application/Control Number: 018,859

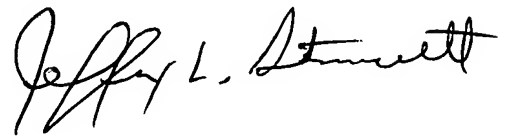
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

jls

June 4, 2003

A handwritten signature in black ink, appearing to read "Jeffrey L. Sterrett". The signature is written in a cursive, flowing style.

Jeffrey L. Sterrett

Primary Examiner

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